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August 22, 2012

Via Certified and Regular Mail

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Rockville Risk Management Assoc.
119 North Park Avenue, Suite 407
Rockville Centre, NY 11570

Hayden Building Maintenance Co
169 Western Highway
West Nyack, NY 10994

400 Columbus, LLC
400 Columbus Avenue
Valhalla, NY 10595

RE: Artur Sleszynski and Karolina Slezynski v. 400 Columbus, LLC and Hayden Building Maintenance Corporation

Our Policyholder: Pinnacle Construction & Renovation Corp
Claimant: Arthur Sleszynski and Karolina Slezynski
Date of Loss: September 10, 2011
Claim No.: 01-083301
Policy No.: CCP710261

Dear Mr. Gomes:

I am the claim representative for Century Insurance, a division of Meadowbrook Insurance Group, assigned to oversee this claim on behalf of Century Surety Company. We are the general liability insurance carrier for Pinnacle Construction & Renovation Corp (Pinnacle). We acknowledge receipt of your tender of the above captioned lawsuit.

Century Surety Company issued a commercial general liability insurance policy to Pinnacle Construction & Renovation Corp with effective dates of May 18, 2011 to May 18, 2012. The policy was issued with liability limits of \$1,000,000 each occurrence and a general aggregate of \$2,000,000. The policy includes a \$1,000.00 per claim deductible.

We have reviewed the complaint along with your tender and our policy information, and advise that we must deny your tender at this time.

Policy No. CCP 710261 carries Endorsement CG2033 07/04, provides in the pertinent part:

Corinna Sievert
Senior Claims Representative
CSievert@centurysurety.com | 800-652-1978
Mailing Address: P.O. Box 163340 Columbus, Ohio 43216-3340
Physical Address: 465 North Cleveland Avenue, Westerville, Ohio 43082
Phone: 800-878-7389 Fax: 614-895-7040 Website: www.centurysurety.com

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – AUTOMATIC STATUS WHEN
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
 2. The acts or omissions of those acting on your behalf;
- in the performance of your ongoing operations for the additional insured.
- * * *

Plaintiff's Complaint does not allege that Plaintiff's injuries arose from Pinnacle's acts or omissions in the performance of Pinnacle's ongoing operations. Therefore, neither 400 Columbus, LLC nor Hayden Building Maintenance Corp qualify as an additional insured on our policy.

Even if 400 Columbus, LLC or Hayden Building Maintenance Corp did qualify as an additional insured, they would be subject to this policy's exclusions and endorsements which serve to amend, restrict, or exclude coverage available under the policy. We refer you to endorsements CGL 1702 11/00 Action Over Exclusion and CGL 1710 11/00 Exclusion – Bodily Injury to Independent Contractors. We cite these endorsements below.

CGL 1702 11/00 reads:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ACTION OVER EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is agreed that the following change is made to Coverage A. 2. Exclusions:

Exclusion **e. Employer's Liability** is deleted in its entirety and replaced with the following:

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the named insured arising out of and in the course of:
 - (a) Employment by the named insured; or
 - (b) Performing duties related to the conduct of the named insured's business; or

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- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the named insured may be liable as an employer or in any other capacity; and
(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

CGL 1710 11/00 reads:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - BODILY INJURY TO
INDEPENDENT CONTRACTORS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is agreed that this insurance does not apply to "bodily injury" to:

- (1) Any independent contractor or the "employee" of any independent contractor while such independent contractor or their "employee" is working on behalf of any insured; or
(2) The spouse, child, parent, brother or sister of such independent contractor or "employee" of the independent contractor as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

Even if 400 Columbus, LLC or Hayden Building Maintenance Corp did qualify as an additional insured and it was determined that Mr. Sleszynski was injured while in the course and scope of employment by Pinnacle or as a subcontractor of Pinnacle, the above exclusions would apply and exclude coverage for this matter.

Attached to Pinnacle's policy is the endorsement CBL 1914 0211, Exclusion – Construction Management, which reads as follows:

EXCLUSION - CONSTRUCTION MANAGEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

In consideration of the premium charged the following changes are made to this policy:

The following exclusions are added to **Section I – Coverages, Coverage A Bodily Injury And Property Damage Liability** and to **Coverage B Personal And Advertising Injury Liability**:

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This insurance does not apply to:

Construction Management or Consulting

"Bodily injury" or "property damage" arising out of, or resulting from, any insured acting as a construction manager or construction consultant.

For the purposes of this exclusion construction management or consulting means those operations undertaken to manage or consult on construction activities or plans when the insured does not perform, or directly contract with subcontractors to perform the actual construction activities on which they are consulting or managing.

Plaintiff's Complaint specifically alleges that 400 Columbus, LLC and Hayden Building Maintenance Corp were acting as construction managers. Therefore, any damages arising from their activities as construction managers would also be excluded under our policy.

Furthermore, if you were to qualify as an additional insured, any coverage provided would be excess over any other policy available to you.

Our policy, form CBL 1901 04/08 Contractors Amendatory Endorsement modifies **Section IV- Commercial General Liability Conditions** as follows:

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

In consideration of the premium charged the following changes are made to this policy:

It is agreed that **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is changed as follows:

1. Item **4. Other Insurance** is deleted and entirely replaced by the following:

Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

- a. This insurance is excess over any other insurance whether the other insurance is stated to be primary, pro rata, contributory, excess, contingent, umbrella, or on any other basis; unless the other insurance is issued to the named insured shown in the Declarations of this Coverage Part and is written explicitly to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.
- b. When this insurance is excess, we will have no duty under Coverage **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- c. When this insurance is excess over other insurance, we will pay only our share of the amount of loss, if any, that exceeds the sum of:
 - (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (2) The total of all deductible and self insured amounts under all that other insurance.

* * *

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Century Surety Company ("Century") hereby denies and disclaims any obligations to 400 Columbus, LLC or Hayden Building Maintenance Corp under the captioned policies of insurance for this matter. Accordingly, Century cannot provide indemnity or defense for such claims.

Should you have additional information that you feel may alter our position, please forward it for review. If you have any questions or concerns regarding our position, feel free to contact me. Thank you in advance for your anticipated cooperation.

Sincerely,

CENTURY SURETY COMPANY

Corinna Sievert

Corinna Sievert
Senior Claims Representative

CRS:

cc: Pinnacle Construction & Renovation Corp
1882 Putnam Ave.
Ridgewood, NY 11385

Talisman & Delorenz, PC – as plaintiff's representative
409 Fulton Street
Brooklyn, NY 11201

WARNING
(New York)

General: All applications for commercial insurance, individual, group or blanket accident and health insurance and all claim forms, other than automobile insurance - "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation."

Fire: "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime. The proposed insured affirms that the foregoing information is true and agrees that these applications shall constitute a part of any policy issued whether attached or not and that any willful concealment or misrepresentation of a material fact or circumstances shall be grounds to rescind the insurance policy."

Revised 02/2012